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May 2, 1995

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URGENT
FILE 0701

HAND DELIVERED

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
101 East Gaines Street
Tallahassee, Florida 32399

Re: Docket No. 941101-EQ, Petition of Florida Power Corporation for determination that its plan for curtailing purchases from Qualifying Facilities in minimum load conditions is consistent with Rule 25-17.086, F.A.C.

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Dear Ms. Bayo:

Enclosed for filing and distribution are the original and 15 copies of Orlando CoGen Limited's Request for Official Recognition.

Please acknowledge receipt of the above on the extra copy enclosed herein and return it to me. Thank you for your assistance.

Sincerely,

Vicki Gordon Kaufman
Vicki Gordon Kaufman

VGK/jfg

Enclosures

RECEIVED & FILED

[Signature]
FPSC BUREAU OF RECORDS

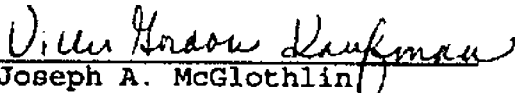
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FPSC-RECORDS/REPORTING

3. All parties have been provided with timely notice of this request via service of a copy of this motion and the attached order.

WHEREFORE, OCL requests the Commission to take official recognition of the New York Public Service Commission order.


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Orlando CoGen Limited's Request for Official Recognition has been furnished by hand delivery*, Federal Express**, or by U.S. Mail to the following parties of record, this 2nd day of May, 1995.

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9TH OPINION of Level 1 printed in FULL format.

Proceeding on Motion of the Commission to Establish
Conditions Governing Curtailment Clauses in Contracts for
On-Site Generation

Case 88-E-081

New York Public Service Commission

1989 N.Y. PUC LEXIS 71

June 27, 1989

PANEL:
[*1]

COMMISSIONERS PRESENT: Peter Bradford, Chairman; Gail Garfield Schwartz; Eli M. Noam; James T. McFarland; Edward M. Kresky; Henry G. Williams

OPINION:

At a Session of the Public Service Commission held in the City of Albany on June 21, 1989

ORDER REJECTING CONTRACT CURTAILMENT CLAUSES

(Issued and Effective June 27, 1989)

BY THE COMMISSION:

BACKGROUND

Following the issuance of the Interim Policy, n1 the Niagara Mohawk Power Corporation (Niagara Mohawk) added a clause to its standard contract offers to alternative power producers (APP) permitting the utility to curtail deliveries of electricity from APPs during periods when system load is light. This curtailment clause is derived from a provision of the Public Utility Regulatory Policies Act (PURPA) regulations, "which permit utilities to curtail when, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases." 18 C.F.R. § 292.304(f)(1).

n1 Case 28962, et al., Interim Statement of Policy and Order on Contracts for the Purchase of Electricity From On-Site Generators (Issued September 28, 1987).

Under § 292.304(f), [*2] "operational circumstances" exist, for example, when a utility would curtail generation from its own "must-run" units during a light-load period in order to take generation from APPs. Once curtailed, such units would not be available to generate when load rises away from the low load point towards that day's load peak. Under these circumstances, the utility, instead of avoiding costs, would incur additional costs in securing substitutes for the unavailable must-run generation. In order to sidestep such a "negative avoided cost" predicament, § 292.304(f) permits a utility to curtail deliveries from APPs and continue to operate its own must-run generation.

Curtailling deliveries from APPs during light-load periods enables a utility to avoid curtailling production at its own must-run units. APPs, however, are

generally paid only for electricity they actually deliver, and, if curtailed when able to produce, will forgo revenues during such periods.

Because Niagara Mohawk's curtailment clause raised complicated questions of law and fact, we instituted this proceeding to investigate curtailment issues, rather than addressing the clause in the context of Niagara Mohawk contract approval [*3] proceedings. Case 88-E-081, Order Instituting Proceeding (Issued May 20, 1988) (Curtailment Order). Niagara Mohawk contracts containing the clause were approved subject to the outcome of this proceeding, pursuant to PSL § 66-c.

After the proceeding was instituted, utilities other than Niagara Mohawk began to include curtailment clauses in their contracts. Such contracts were also approved contingent upon the outcome of this proceeding. Eventually, all seven of New York's major electric utilities submitted reports in this proceeding justifying use of curtailment clauses. A number of APPs responded, arguing that the utilities' submittals were legally and factually flawed. A list of the parties, abbreviations and their filings and comments is attached as Appendix I.

THE UTILITY FILINGS

In General

All seven of New York's major electric utilities forecast that operational circumstances will occur in their service territories during light-load periods, permitting them to curtail deliveries of power from APPs. The utilities claim that operational circumstances should be defined broadly, so that they may curtail purchases from APPs before curtailing their own must-run [*4] fossil and nuclear units, hydroelectric units and firm off-system purchases.

Niagara Mohawk's Filing

Niagara Mohawk states that operational circumstances will occur if it is required to reduce the cumulated minimum generation from nuclear units, hydro units, must-run fossil fuel units, firm off-system purchases from nuclear or hydro sources, and any purchase from the New York Power Authority (NYPA). Niagara Mohawk would implement curtailment based upon two contractual definitions of operational circumstances. Curtailment Order at 3. Under the first, the "optimum levels proviso," Niagara Mohawk may begin to curtail APP deliveries rather than reducing generation at hydro or nuclear plants below optimum levels, assuming that the utilities' other must-run sources of electricity should not be curtailed. Under the second definition, the "minimum loading proviso," Niagara Mohawk would curtail APP deliveries if the utility's "minimum generation" operational at a given time, when cumulated with APP generation operational at the same time, exceeded Niagara Mohawk's total load at that time.

Niagara Mohawk also cumulates contracted-for APP generation as it grows over the amount Niagara [*5] Mohawk estimates will trigger operational circumstances, and then assigns the APPs into blocks (sized in ranges of MWs). For each of these blocks, Niagara Mohawk designates a specific number of hours during which it may refuse to take generation from APPs assigned to the block. The number of hours grows with each added block. APPs are placed in the blocks on a first-come, first-served basis, queued according to the date the

generation contract is signed.

Niagara Mohawk argues that we may approve these curtailment clauses, as we are empowered to balance utility, ratepayer and APP interests in reviewing contract provisions. See, PSL § 66-c. Niagara Mohawk concludes that its curtailment provisions are "reasonable" under § 292.304(f), and proffers evidence in support of this conclusion. Niagara Mohawk claims that PROMOD computer model runs show that 900 MWs of APP penetration in 1990 will force the utility to displace generation from its must-run sources in at least 950 hours during the year, and that APP penetration at a level as low as 500 MW will result in some curtailment. n2

n2 These PROMOD runs were formulated using the assumptions for the "optimum levels proviso." [*6]

Niagara Mohawk includes hydro units, nuclear units and firm purchases in its minimum generation level. In addition, the utility designates, as must-run, fossil units Huntley 67 and 68, Dunkirk 3 and 4, Albany 2 and Roseton 2. Niagara Mohawk claims that nuclear units are not designed to be cycled due to "constraints of thermal margins, pre-conditioning of fuel, and Xenon distribution." Niagara Mohawk also believes that cycling run-of-the-river hydro units would result in spilling water over the dams, which the utility implies is a cost. Niagara Mohawk does not recognize sales to other utilities in computing its minimum generation amount.

Niagara Mohawk has developed power control procedures to implement curtailments. It concludes that its curtailment procedures are reasonable and are in the best interests of the utilities' customers.

NYSEG's Filing

NYSEG propounds a very broad definition of operational circumstances. NYSEG interprets the term to include the impact of APP generation on system reliability, because overgeneration caused by APP production could reduce system reliability and increase costs. As a result, NYSEG believes that it should assert control over APP [*7] production through directing economic dispatch of APP units.

NYSEG would begin curtailments if it were required to reduce generation from its "base resources of 1174 MWs." NYSEG Filing at 20. NYSEG's filing does not explain in detail what those "base resources" are, but the utility does conclude that "essentially all NYSEG plants are must-run." NYSEG Filing at 28. The utility would implement curtailments through a computerized procedure, and would penalize APPs that did not curtail in a timely fashion. The utility proffers a complex system for determining the amount of such penalties.

NYSEG finishes its discussion of curtailment with a proposal to curtail APP deliveries according to the effect deliveries would have on the discrete geographical segments of NYSEG's service territory. Because NYSEG's service territory is not contiguous, the utility argues, it could incur a cost in taking generation in a segment of the territory where load is light, and transmitting that generation to another segment that needs the power. NYSEG insists it should be permitted instead to curtail deliveries from the APP delivery located in the light-load segment. NYSEG does not expound any legal [*8] justification for this segment-by-segment curtailment procedure.

LILCO's Filing

LILCO believes that curtailment is permitted when continuing to take APP generation would impose significant costs on the utility. LILCO claims that, while some of these costs would be immediately apparent, others might be hidden.

LILCO lists as must-run generation 740 MW of fossil generation, 179 MW from its share of the Nine Mile 2 nuclear plant and 102 MW of firm purchases from NYPA. The utility states that its figure for fossil generation incorporates the lowest level at which its units can be operated without being shut down, and an imputation of 150 MW "to allow regulation of [fossil] units to meet changes in demand." LILCO then calculates its minimum load at 1100 MW, leaving a gap of only 79 MW where it could take APP generation without reducing generation from its must-run sources. Beyond that amount, LILCO asserts, curtailment would be required. The utility also claims off-system sales are not feasible during light-load periods.

LILCO illustrates its discussion of must-run status with reference to engineering detail. It states it would incur expensive start-up costs if it were to shut [*9] down its must-run oil units. LILCO also claims that an increased number of shut-downs of these units would decrease reliability and increase maintenance expenses. Finally, LILCO concludes that Nine Mile 2 is a base-load unit, and that the utility's share of the plant's output cannot be varied with incurring significant costs.

LILCO would distribute curtailment hours equally among APPs, to the extent feasible. LILCO also provides procedures for informing APPs of curtailments and subsequent verification of the reasons for a curtailment.

Other Utility Filings

RG&E states that curtailment of generation should proceed in the priority already established under the New York Power Pool's (NYPP) Minimum System Generation procedures. Under those procedures, preference against curtailment is given to run-of-the-river hydro facilities, nuclear plants, fossil units needed to follow load and meet anticipated demand peaks, and firm purchase agreements. RG&E sets minimum levels of generation using these parameters, recognizing first capacity from its Ginna nuclear unit. The utility next includes must-run fossil units, identifying minimum load levels for each unit. RG&E also varies the [*10] minimum generation level seasonally, because it believes that the number of fossil units on must-run status would change with the season. Rather than reducing its generation below the resulting minimum generation levels, RG&E would curtail APP deliveries.

RG&E says it cannot accurately forecast the number of hours for which curtailment will be necessary in the future. The utility does claim, however, that, using the presence of excess nuclear energy as an indicator, and assuming 150 MW of APP penetration, overgeneration would occur in nearly 7,300 hours per year. The utility admits that it did not consider the impact of off system sales, but asserts that increasing state-wide levels of APP penetration will make it more difficult to make such sales to other utilities. RG&E would implement curtailment on an individualized basis, negotiating with each APP.

Central Hudson carefully defines its must-run units as including its share of Nine Mile 2 and minimum load levels at a number of its fossil units. Central

Hudson complains that this minimum generation level does not recognize benefits to ratepayers that accrue from operation of its Danskammer coal-fired units. The utility says [*11] it does not expect to need to curtail APP generation during the next several years, but that curtailment could eventually become necessary. The utility, however, admits it has not considered the impact of off-system sales.

O&R also begins by listing its must-run units. These include minimum load at a number of fossil units, one hydro unit, and O&R's allocation of nuclear power from NYPA. O&R also anticipates a firm purchase agreement with Hydro Quebec, which would be included in its minimum generation level. O&R then analyzes the impact of two cumulative 50 MW blocks of APP generation. The utility concludes that the first block would not cause significant overgeneration, but that the second would result in an overgeneration situation during approximately 16% of the annual hours in 1990. O&R believes that, given the small size of its service territory, it can expect that only a limited number of APPs will choose to locate there, and so can implement curtailments of them on an individualized basis.

Con Edison defines operational circumstances as periods during which actual minimum generation on its system equals or exceeds system load, and no "economic" market exists for the [*12] excess. This minimum generation level includes purchases from a number of NYPA plants committed to Con Edison.

Con Edison performed an analysis to determine the extent to which its minimum generation exceeded its minimum load during 1985-1987. Con Edison discovered a number of hours during which such circumstances had occurred, although adverse consequences were avoided by making off-system sales. Using that data, and projections of APP penetration and load growth, Con Edison developed load curves forecasting curtailment hours. Con Edison proposes to curtail APPs on a cost basis, with the most expensive curtailed first.

COMMENTS

A number of APPs filed comments disputing the conclusions the utilities reached. The APPs generally argue for a much more restrictive definition of operational circumstances, and claim that the utilities have distorted the intent of § 292.304(f).

SEO presents a thorough evaluation of the legal principles governing curtailment. SEO argues that curtailment is allowable under § 292.304(f) only when the utility experiences negative avoided costs not otherwise reflected in the avoided costs rates paid to APPs. According to SEO, the Federal Energy [*13] Regulatory Commission (FERC), in the preamble to the PURPA regulations, has provided examples of when negative avoided costs occur, and curtailment is limited to those instances that fit the examples. One example of operational circumstances occurs when a nuclear unit is forced to reduce output so that APP power can be accepted, and the utility experiences increased costs in returning nuclear output to full capacity when demand for electricity begins to rise from the low load point towards the peak point. Similarly, reducing generation on fossil base-load units could increase costs in cycling these units back up to full output, or starting up other, more expensive units to meet rising system demands. 45 Fed. Reg. 12227.

n3 Small Power Production and Cogeneration Facilities; Regulations Implementing PURPA, 45 Fed. Reg. 12214 (February 25, 1980).

SEO also believes that the PURPA definition does not entitle utilities to curtail APPs in preference to curtailing off-system purchases. SEO notes that the originally proposed regulation that became § 292.304(f), set forth at 44 Fed. Reg. 61204, permitted curtailment when forgoing off-system purchases would raise utility costs, [*14] but that "the final rule was more narrowly drawn and eliminated purchases as a cost that could justify curtailment." SEO comment at 9.

SEO continues its discussion with an analysis of the relationship between curtailment and avoided cost rates. It notes that curtailment is permissible only when negative avoided costs occur, and such negative avoided costs are not recognized in the avoided cost rates paid APPs. 45 Fed. Reg. 12228. SEO contends that, as current avoided cost rates reflect data from all hours of the year (presumably including any negative avoided cost hours), curtailment cannot be justified in any hour. SEO claims that curtailment can be authorized in future years only if negative avoided cost hours are not recognized in avoided cost rates.

SEO also criticizes some of the utility filings. It believes that the utilities attempt to justify curtailment, not when negative avoided costs occur, but at any time average avoided costs exceed the utility's marginal cost of generation. SEO asserts that this sort of analysis does not comport with § 292.304(f).

According to SEO, several sources the utilities clothe with must-run status can, in fact, be curtailed without creating [*15] negative avoided costs. SEO states that nuclear plants can be backed down to some extent without incurring any additional production costs; spilling water at a hydro site, while wasteful, is not a negative avoided cost; and contracts for firm purchases generally permit the utility to reschedule the hours during which power will be taken. SEO argues that these considerations must be addressed in determining a utility's minimum generation level.

Other APPs generally agree with SEO's analysis, and complain that unlimited curtailment renders projects unfinanceable. Ref-Fuel points out that curtailment is only permitted when a utility incurs negative avoided costs, and that standard is not a measure of the difference between the avoided cost rate paid an APP and the cost of other sources from which the utility could obtain generation. Ref-Fuel adds that utilities confuse the negative avoided costs that create operational circumstances with the threats to system reliability that create "system emergencies" under § 292.307(b). n4 Ref-Fuel accuses the utilities of attempting to expand "system emergency" to include operational circumstances.

n4 Under this regulation, utilities may disconnect APPs when a "system emergency" threatens system reliability. [*16]

Empire also believes that FERC intended to define operational circumstances narrowly. Empire further contends that there is a preference to recognize negative avoided costs in rates, rather than permit curtailment.

Falcon argues that economic dispatch of APPs is not technologically feasible, because, in most instances, APP units cannot follow load. It characterizes spilling water at hydro sites as, at most, a zero avoided cost rather than a negative avoided cost. Falcon also believes that the capacity credit included in utility purchase power tariffs must be recalculated if some hours of the year are forecast as negative avoided cost hours, raising a potential of curtailment, because those capacity credits are calculated on the basis of production averaged over all hours during the year. Finally, Falcon criticizes NYSEG's proposal to curtail within the various segments of its service territory as impermissible under PURPA.

NEG concurs in this latter argument, asserting that NYSEG cannot justify this segment-by-segment curtailment concept through alleging increased transmission costs between segments. Indeck adds that NYSEG's segment methodology precludes financing of APP projects. [*17]

FEA makes the same legal objections as the other APPs, and adds that Niagara Mohawk's system of allocating APPs to curtailment blocks is unreasonable. FEA complains that curtailments are not a tool for economic comparison, as Niagara Mohawk seems to believe. Indeck insists that curtailment should be permitted only during system emergency periods, unless economic dispatch is addressed in the APP contract.

IPPNY also focuses on the negative avoided cost concept and joins in the criticisms of the other APPs. IPPNY, however, believes that hydro units - whether utility or APP - should not be curtailed.

Occidental claims that Niagara Mohawk's estimate of must-run fossil units is overstated, because some of those units can be shut-down entirely if APP penetration reaches the levels Niagara Mohawk predicts. Occidental also provides a study purporting to demonstrate that Niagara Mohawk's use of PROMOD is flawed. For example, Occidental contends that Niagara Mohawk has increased the minimum load levels it assumes for its fossil units, in comparison to data the company submitted in its last rate case, Case 29327. Occidental also argues that Niagara Mohawk has not shown that negative [*18] avoided cost hours actually exist, but instead has demonstrated only that other sources of electricity may be cheaper than APP electricity during light-load periods.

Subsequent Filings

Occidental and FEA supplemented their comments with later filings. Both APPS believe if they are entitled to special relief against Niagara Mohawk's system of curtailment blocks. The utility opposes such relief.

Occidental characterizes as arbitrary and unfair Niagara Mohawk's practice of assigning APPs into blocks by date of contract signing. The developer asserts that, as its Option III contract took longer to negotiate than other developers' Option I contracts, it should be assigned to a block providing for fewer curtailment hours. Alternatively, Occidental insists that it is entitled to grandfathering and should be placed in the curtailment block open as of February 5, 1988. According to Occidental, it sent an executed contract offer to Niagara Mohawk on that date.

Similarly, FEA states that it is entitled to be placed in the curtailment block open as of October 1987. FEA complains that Niagara Mohawk delayed

entering into a contract because the developer asserted its rights to protest [*19] Niagara Mohawk's insistence, in negotiations, to include in the contract clauses that were improper under the Interim Policy. FEA believes the appropriate relief is to assign its facility to the lower curtailment block.

Niagara Mohawk responded separately to both Occidental and FEA. The utility claims that neither Occidental's protracted negotiating history nor its eventual entry into an Option III contract warrants altering its curtailment block priority. The utility also denies that it insisted on unacceptable conditions in negotiations with FEA, or that the FEA negotiations were otherwise tainted. The utility concludes that, while most developers would desire a position in a lower curtailment block, neither Occidental nor FEA have advanced arguments justifying preferential treatment.

DISCUSSION AND CONCLUSION

No utility has successfully demonstrated that operational circumstances will actually occur, creating negative costs - i.e., costs to the utility greater than those it would incur if it did not make APP purchases. Therefore, the utilities' contract curtailment clauses are premised on assumptions that do not comport with § 292.304(f). n5 Moreover, these contract [*20] clauses could erect a barrier to securing financing for APP projects. As a result, utilities are barred from implementing these contractual curtailment clauses. n6

n5 Some APP contracts integrate into variable price formulas dispatchability provisions which permit curtailment. Such provisions are not derived from § 292.304(f), and so are outside the scope of this proceeding.

n6 This result renders moot the supplemental filings of Occidental and FEA.

All the utility filings share one fatal flaw - they do not recognize off-system sales. The utilities assume their systems are operated in isolation rather than as part of the New York Power Pool (NYPP). As part of NYPP, however, a utility may continue to operate its must-run units, without incurring negative avoided costs, so long as an off-system sale may be made. Therefore, before any utility can be allowed to curtail, it must be shown that NYPP cannot absorb the electricity.

Staff has analyzed pool-wide operations to assess the impact of APP generation on the state-wide system during light-load periods, using PROMOD computer runs for the years 1992-1994. Staff found that, at APP penetration levels below 5000 MW, utilities [*21] will not be required to curtail deliveries from their must-run units, as a market for the generation will exist. Indeed, staff discovered that significant curtailment would be necessary only if 7000 MW of penetration is assumed. But the utilities themselves currently expect only 3,096 MW of alternative power production by 1995, and staff estimates penetration in that year at 3000 MW (including some APP generation that will be dispatchable without operational circumstances curtailment). See, Case 88-E-093, Proceeding to Update Long-Run Avoided Cost Estimates (1989 LRAC proceeding). Staff's projections are attached as Appendix II. n7

n7 Staff's PROMOD runs were made using the 1988 LRAC data base. Case 28962, et al., Opinion No. 88-13 (Issued May 10, 1988). If the 1989 LRAC data base were used instead, even fewer curtailment hours would be predicted. The 1989 load forecasts are greater than the 1988, which would enable the utilities to

take even greater amounts of APP generation without realizing operational circumstances.

It is clear that, once off-system sales are recognized, the justification for curtailment vanishes. It also appears that there will be no [*22] need to curtail APP production even outside the 1992-94 years analyzed. Before 1992, APP penetration levels will be too low to justify curtailment in any event. After 1994, the process of bidding should match new APP capacity additions to utility capacity needs. n8 Moreover, it can be assumed that a significant portion of the generation secured through bidding will be utility-dispatchable, further enhancing a utility's capability to alleviate overgeneration situations without operational circumstances curtailments. Therefore, curtailments are unneeded.

n8 In Case 29409, Opinion No. 88-15 (Issued June 3, 1988), utilities were directed to develop plans to obtain new capacity through the process of bidding, rather than through individual contracts.

Other defects in the utility filings also compel rejection of the curtailment clauses. No utility has adequately met all the aspects of the test required under § 292.304(f) to justify curtailment. Under § 292.304(f), a utility must establish minimum generation levels for light-load periods, and show that reducing generation below those levels will cause the utility to incur negative avoided costs. The utility must then forecast [*23] light-load periods and levels of APP penetration, and prove that the penetration during light-load periods will force the utility to reduce its generation below the minimum target levels selected.

The minimum generation levels may reflect only those units which, if curtailed, would create negative avoided costs. Nuclear plants and must-run fossil units may properly be included in minimum generation, so long as they are recognized at their minimum operational level. Run-of-the-river hydro facilities may also be included. If these units are curtailed, utilities will be forced to spill water. Although the APPs argue that the lost water is at best a zero avoided cost, it appears more reasonable to deem it a negative avoided cost. There is a loss, because once the water is gone over the dam, the utility cannot recover it for use in generating electricity.

Off-system purchases, however, may not be included in minimum generation levels. SEO is correct in arguing that PURPA must be interpreted as precluding recognition of these purchases. Moreover, as SEO points out, these contracts often permit rescheduling of delivery hours, allowing the utilities to avoid taking generation during [*24] light-load periods. As a result, it is not unreasonable to require utilities to structure their off-system purchases so that they can take APP generation instead of off-system purchases during light-load periods.

The utility filings do not comport with the § 292.304 requirements. All of them improperly include off-system purchases in minimum generation levels and are unacceptable for this reason alone. Moreover, compared to other forecasts available, they appear to overstate capacity factors and penetration levels for APP generation during light-load periods. Their estimates of load during light-load periods appear understated, because they do not incorporate the more recent, higher load forecasts presented in Case 88-E-093. Thus, all the utilities overstate their minimum generation by including off-system

purchases, overstate APP generation and understate the load on their systems during light-load periods. As a result, their projections of curtailable hours are unreliable.

The various filings are also each defective in other respects. Niagara Mohawk's PROMOD computer runs explore only its "optimum levels proviso" assumptions. That proviso, however, is unacceptable under [*25] § 292.304(f), because, as Occidental points out, Niagara Mohawk's calculations reflect marginal cost assumptions. Showing low marginal costs, however, is insufficient under § 292.304(f); that section requires a showing of negative avoided costs. As Niagara Mohawk's proviso does not recognize the negative avoided cost concept, it is unacceptable.

NYSEG's filing is flawed because the approaches it favors bear no relationship to § 292.304(f). NYSEG tried neither to justify its minimum generation level, nor to show that it would incur negative avoided costs. Its segment-by-segment curtailment proposal suffers from these defects as well.

The other utility proposals, although predicated on minimum generation levels, also fail. Niagara Mohawk did not support its "minimum loading proviso" with adequate evaluation of the units it designated must-run. Con Edison did not prove that its minimum generation assumptions were, in fact, predicated entirely on must-run units, because it relied exclusively on historical data which might or might not include only must-run units. LILCO did not sufficiently elucidate a connection between its 150 MW "fossil unit regulation" imputation and the negative [*26] avoided cost concept. Its minimum generation level, therefore, is flawed.

Central Hudson, RG&E and O&R made an effort to properly establish minimum generation levels. Central Hudson, however, could not forecast the existence of any curtailment hours using its assumptions. Therefore, its filing does not support curtailment. RG&E erred in replying on its excess nuclear energy indicator, a marginal cost-based standard, rather than on a negative avoided cost standard. O&R admits that, even assuming 100 MW of APP penetration, it would be required to curtail generation only for 5% of the hours in 1994. As a result, the utility has failed to demonstrate that significant levels of curtailment will be required.

Therefore, no utility has been able to demonstrate that negative avoided cost operational circumstances will exist in the period between now and 1994. After 1994, it can be assumed that the process of bidding will match new sources of generation supply to generation need, and will enhance operational flexibility by providing for greater dispatchability. As a result, there is no justification for curtailment in the period after 1994. Because the utilities have failed to demonstrate [*27] that they can satisfy the conditions established in § 292.304(f) justifying curtailments, the curtailment clauses utilities have included in contracts with APPs, are rejected and may not be implemented. n9

n9 While utilities are not prohibited from including clauses permitting curtailment pursuant to § 292.304(f) in future contracts, any such clause must be crafted to reflect the requirements set forth in this Order.

We will take this action on an emergency basis under § 202(6) of the State Administrative Procedure Act (SAPA). Delay in deciding on the utilities'

proposals to implement curtailments through contract clauses might impede the ability of alternative power production developers to proceed with project development, thereby contravening the State's policy, set forth in PSL § 66-c, of encouraging such development. Accordingly, immediate action is necessary for the preservation of the general welfare and compliance with the advance notice and comment requirements of § 202(1) of SAPA would be contrary to the public interest.

The Commission Orders:

1. This Order is adopted on an emergency basis pursuant to § 202(6) of the State Administrative Procedure Act.

2. [*28] The clauses New York electric utilities have included in contracts with alternative power producers permitting the utilities, pursuant to 18 C.F.R. § 292.304(f), to curtail electricity deliveries from the producers are rejected and the utilities are barred from implementing them.

3. This proceeding is continued.

By the Commission

APPENDIX I

Party	Abbr.	Date(s) of Filing	Purpose of Filing
American Ref-Fuel	Ref-Fuel	10/18/88	Comment
Central Hudson Gas & Electric Corporation	Central Hudson	8/17/88	Curtailment Report
Consolidated Edison Company of N.Y., Inc.	Con Edison	8/25/88	Curtailment Report
Empire Energy Niagara Limited Partnership	Empire	10/18/88	Comment
Falcon Seaboard Oil Company	Falcon	10/18/88	Comment
First Energy Associates	FEA	10/18/88	Comment
		2/8/89	Modification of Curtailment Block
		5/23/89	Response to NMPC
Indeck Energy Services, Inc.	Indeck	10/18/88	Comment
Independent Power Producers of New York	IPPNY	10/18/88	Comment
Long Island Lighting Company	LILCO	8/25/88	Curtailment Report
Mercer Companies, Inc.	Mercer	10/18/88	Comment
New York State Electric & Gas Corporation	NYSEG	8/17/88	Curtailment Report
Niagara Mohawk	NMPC	8/18/88	Curtailment Report

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Power Corporation

		5/9/89	Response to FEA
		5/18/89	Response to Occidental
Northern Energy Group	NEG	10/18/88	Comment
Occidental Chemical Corporation	Occidental	10/18/88	Comment
		12/1/88	Supplemental Comment
		4/11/89	Modification of Curtailement Block
Orange & Rockland Utilities, Inc.	O&R	8/18/88	Curtailement Report
Rochester Gas & Electric Corporation	RG&E	8/18/88	Curtailement Report
State Energy Office	SEO	10/21/88	Comment
Town of Huntington [-29]	Huntington	10/18/88	Comment

APPENDIX II

Case I

5000 MW APP Penetration

1992	17	2.5
1993	9	0.8
1994	0	0.0

Case II

7000 MW APP Penetration

Year	Curtailement Hours	"Dump" Energy GWhs
1992	1530	1059.6
1993	1294	735.1
1994	695	288.8